

**1705653 (Migration) [2020] AATA 5471 (17 July 2020)**

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division

**CASE NUMBER:** 1705653

**MEMBER:** Nicholas McGowan

**DATE:** 17 July 2020

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 17 July 2020 at 1:41pm

1. **CATCHWORDS**

2. *MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – de facto partner – bogus document – hospital’s death certificate for applicant’s former spouse has reference numbers for another person – no compassionate or compelling circumstances justifying grant of visa – applicant’s visa history – decision under review affirmed*

3.

4. **LEGISLATION**

*Migration Act 1958 (Cth), ss 362, 376*

*Migration Regulations 1994 (Cth), Schedule 2, cl 820.226; Schedule 4, PIC 4020*

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

## REVIEW

5. The applicant first arrived in Australia [in June] 2012 holding a [temporary visa] which ceased on June 21, 2012.
6. The applicant lodged a protection visa on July 17, 2012. The Minister's delegate refused to grant that visa on February 21, 2013.
7. The applicant appealed the above refusal decision to the independent Refugee Review Tribunal on March 7, 2013.
8. The Tribunal (differently constituted) found the applicant did not meet the criteria for the grant of the protection visa on December 4, 2013. The applicant sought judicial review of the Tribunal's decision at the Federal Court on December 23, 2013. The Federal Court appeal ended unsuccessfully for the applicant [in October] 2014. On August 20, 2015 the applicant appealed the Federal Court's decision to the Full Federal Court. This Full Federal Court appeal ended unsuccessfully for the applicant [in December] 2015.
9. The applicant applied for Ministerial Intervention on January 12, 2016. The Ministerial Intervention request was unsuccessful on February 5, 2016.
10. The applicant sought to lodge a subsequent protection visa application on January 12, 2016, though this ended unsuccessfully on February 5, 2016.
11. The applicant lodged a [second temporary visa] application on March 4, 2016, though this was refused by the Minister's delegate on March 10, 2016.
12. The applicant appealed the [second temporary visa] refusal decision to the Administrative Appeals Tribunal (differently constituted) on March 23, 2016.
13. [In July] 2016 the Administrative Appeals Tribunal (differently constituted) found the applicant did not meet the criteria for the grant of the visa.
14. The visa applicant applied for a partner visa application on 8 August 2016 on the basis of his claimed 'de facto' relationship with [Ms A] born [date].
15. The above information is contained in the delegate's refusal decision record, which the applicant has provided to the Tribunal as part of this review.

## 16. CONSIDERATION OF CLAIMS, EVIDENCE AND FINDINGS

17. Relevantly, the question is whether the applicant is the de facto partner of his sponsor.
18. Schedule 2 of the *Migration Regulations 1994* sets out the criteria for the grant of a partner visa, of which clause 820.226 is mandatory.
19. Relevantly to this case, under clause 820.226 the applicant must satisfy public interest criteria 4020 (of Schedule 4).
20. Subclause 4020(1) requires that there be no evidence before the Minister that the applicant has given, or caused to be given, to the minister, an officer, the Migration Review Tribunal, a relevant assessing authority or Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa.

21. If public interest criteria 4020(1) is not satisfied, subclause 4020(4) provides that public interest criteria 4020 will nonetheless be satisfied if the Minister is satisfied that: compelling circumstances that affect the interests of Australia; or, compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen; justify the grant of the visa. This is known as the public interest criteria 'waiver'.
22. Public interest criteria 4020(1) applies in this case because the applicant provided a certificate (as part of his present partner visa application) stating his former wife died in hospital on [date] in Pakistan. This is material information, and was sent to the Australian Embassy in Pakistan, who sought verification with [Hospital 1]
23. [Hospital 1] found the document to be a bogus document and advised the Department of Immigration the reference numbers in the document pertained to another person (not the applicant's former wife).
24. The term 'bogus document' for the purpose of clause 4020(1) is defined in section 5(1) of the Act. Under section 5(1), a bogus document is one that the Minister reasonably suspects purports to have been, but was not, issued in respect of the person; or is counterfeit or has been altered by a person who does not have the authority to do so.
25. It is apparent from the document verification completed with [Hospital 1] that the documented provided by the applicant is bogus.
26. The Tribunal notes, the requirements of public interest criteria 4020(1) apply whether or not the Minister became aware of the bogus document.
27. While the bogus document in this case is not required to be relevant to the visa criteria, clause 4020(1) does require the document to have been given 'in relation to' the application for the visa (partner visa application). In this case the applicant has sought to rely on the bogus document to indicate that his past relationship had effectively ceased (because his former wife is dead) and he was therefore free to make an application for a partner (relationship) visa with his sponsor, and have that relationship considered, absent the applicant's wife's actual circumstance.
28. For the requirements of public interest criteria 4020(1) to be engaged, it is not necessary to show knowing complicity by the applicant in the fraud. What is necessary is that the information provided was purposefully false. The requirement that the information be purposefully false and not the result of an 'innocent mistake' were established by the Full federal Court in *Trivedi v MIBP* in the consideration of documents that were found to be 'false or misleading in a material particular'. The like principles apply equally to the provision of 'bogus document' within the meaning of paragraphs (a) and (b) of the definition of *bogus document*.
29. After the immigration department wrote to the applicant on December 8, 2016 inviting him to comment on the bogus document concerns, the applicant responded by admitting the document in question was in fact a bogus document. The applicant explained to the department that after the claimed death of his ex-wife he asked his eldest daughter to get a death certificate. The applicant explained that his daughter, along with her [siblings] went searching hospital by hospital to find where their mother had died, until finally they came upon [Hospital 1] one very hot day, and after one of the siblings passed out from heatstroke and was treated at the hospital, "a staff member" (sic: at [Hospital 1]) took pity on them, and issued them a death certificate.
- 30.

31. Regardless of the truthfulness of the above claims, what is clear to the Tribunal from the evidence provided is that the information provided was purposefully false, and not provided as the result of some 'innocent mistake'.
32. It follows, given the earlier admission by the applicant that he provided a bogus document (notwithstanding he maintains the document "might or might not" be a valid one), and after consideration by the Tribunal, the finding is that the applicant has provided a bogus document and therefore has not met public interest criteria 4020(1).
33. Therefore, the question in this case becomes, whether the 'waiver' should apply.
34. In regards to consideration of compelling circumstances that affect the interests of Australia, the applicant submitted the following:
  - (a) He has been a lawful resident, works, pays his taxes, has been in Australia eight years and is well integrated, and if he is forced to return to his own country it would create lots of difficulties for him, including his own personal security.
35. It is clear that these matters, while important to the applicant, are not relevant to the Tribunal's consideration as they pertain directly to his personal interest (ostensibly) and not the interests of Australia. Where the claim makes reference to and Australia could be seen to have an interest in having a taxpayer pay taxes, the claim has been considered. Nonetheless, this aspect (that a person contributes taxes and participates in the community lawfully) is not so forceful in nature such that they Tribunal compel the Tribunal to apply the waiver. It follows the applicant has not satisfied the Tribunal to waive the requirements of PIC 4020(1) because of compelling circumstances that affect the interests of Australia: PIC 4020(4).
36. In regards to consideration of any compelling or compassionate circumstances that affect the interests of an Australian citizen (or resident or eligible New Zealand person) the applicant has stated (including during the resumed hearing):
  - (b) He pays around \$500.00 per week in taxes, lives in Australia as a responsible citizen, and if he is forced to return to his own country, it will be difficult financially for him and his children who rely on his income to pay for their education, among other expenses.
37. The Tribunal considered these matters, and reminded the applicant that none of the people (himself included) fell within the relevant consideration (as outlined above).
38. Accordingly, the circumstances outlined above do not give rise to either a compassionate or compelling circumstances to apply the waiver in this matter.
39. For the reasons set out above, the applicant has not satisfied the Tribunal that there are compelling or compassionate circumstance(s) that affects the interests of an Australian citizen (or other eligible persons under law) that justify the waiver of the requirements of clause 4020(1) or in this case.
40. Additional matters
41. Post-hearing, the applicant was provide additional time to seek further document from the Tribunal under section 362(A), and to make a further written submission with evidence and argument. That submission has been taken into consideration.

42. The Tribunal also raised the matter of a section 376 certificate, discussed its validity and allowed for submission(s) on the information and validity. Its validity has not been contested, and the information not relied upon in any way in arriving at the above decision based on whether the applicant met the public interest criteria, and if not, the waiver.
43. The Tribunal is obliged to consider all the circumstances of the case including any matters put forward by an applicant, and determine on the evidence as a whole whether compelling or compassionate circumstances justify the granting of the visa.
44. The Tribunal examined the relationship requirements under the Act and regulations, and the Schedule 3 requirements throughout the review. However, as the applicant has failed to meet a requisite criterion for the grant of the visa, the Tribunal need not consider these aspects further, including the later claim the relationship had broken-down.
45. Decision
46. On the basis of the above, the applicant does not meet PIC 4020(1) or (4) and the requirements of that clause should not be waived. As the applicant does not meet clause 820.226 in Schedule 2 of the Regulations, the applicant does not meet the criteria for a Partner (Temporary) (Class UK).
47. Given the findings above, the appropriate course is to affirm the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

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